

**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL RAILROAD ADMINISTRATION  
WASHINGTON D.C.**

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**FRA – LOCOMOTIVE ENGINEER CERTIFICATION CASE  
R.S. Backus Hearing Petitioner, DOT DKT. # 2007-27382  
(FRA Docket No. EQAL 06-13)**

**Union Pacific Railroad Company, Co-Respondent**

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**UNION PACIFIC RAILROAD COMPANY'S BRIEF**

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Following a failed certification ride on August 23, 2009, Union Pacific denied Robert Backus's request for certification as a locomotive engineer. Backus has challenged that decision, attempting to blame everyone but himself for his poor performance. Indeed, it appears that he would like to put a former superintendent of Union Pacific's Roseville Service Unit on trial, rather than defend his own acts and omissions in connection with the denial of his application for a locomotive engineer certificate.

Backus has abandoned his challenge to the validity of the second phase ride that was given on July 14, 2005, though he had previously contended that the actions of the DSLE on that ride "sabotaged" his efforts. This "sabotage" theme, however, runs throughout his challenge to the August 23, 2005 ride. Thus, the only ride in question here is the skills test that was performed in connection with the third phase ride conducted on August 23, 2005. Because the Petitioner failed in four areas of evaluation in connection with the third phase ride and was unable to satisfactorily complete the ride, Union Pacific's decision to deny certification to Backus should be affirmed.

### **Statement of Facts**

Although the only skills ride in question at this stage of the Petitioner's appeal is the skills ride administered on August 23, 2005, there is additional background information that is relevant to the ultimate question of whether Union Pacific's denial of certification was proper, and so it is provided herein. Petitioner entered the student engineer training program on July 5, 2004 and was in the program for nearly 14 months. During that time he had 141 student trips, 4 local simulator lessons, 6 weeks of classroom training with the last 3 weeks including additional simulator training and he attended the heavy grade training program. While 14 months is a long period of time to be in the training program, Union Pacific continued his training in an effort to improve his skills. Backus was kept in the training program longer than the other 5 classmates who started training when he did. Those students had taken promotion months earlier than Petitioner.

Evaluations of Petitioner in his last four months of training are recapped as follows:

**04/08/05:** A Performance ride which indicated coaching on speed, auto brakes, and territory. Comments stated: "Needs more time had to coach FIT on BP test after stopping and needs quit running 4-5 mph under speed."

**05/11/05:** An event recorder review with petitioner. It showed coaching on ind. Brakes, throttle mod, dyn. Brakes and horn. Comments stated "Instructed on bailing independent, gradual use of dynamic and throttle, proper whistle sequence."

**06/29/05:** A familiarization ride that was not completed. Comments state: "Only made it 37 miles due to BNSF locomotive fire. Needs work on territory knowledge."

**07/14/05:** Initial certification ride: evaluation shows failure in Speed, throttle modulation, signal indication, auto brakes, monitor gauges, EPA/EDBA (equivalent powered axles and equivalent dynamic brakes axle) and does not know territory. Comments state: "Mr. Backus failed to control train at Max. downhill speed. Monitor gauges and has poor knowledge of territory."

**07/28/05:** Qualification ride on simulator: evaluation shows failure on speed, independent brakes, dynamic brakes, auto brakes controls slack and coaching in territory and EPA/EDBA. Comments state: "FIT in SIM at JQ 181 for eval. multiple failures on PWR-DYN 10 sec wait, multi no bail prior to set air, failed unannounced ylw flg test at mp 456.5, place train in emerg@25mph at rest."

**08/23/05:** Certification ride: evaluation shows failures in Speed, Safety, calling signals, and trk warrant/bln. Comments state: "failed to comply with FORM B in a trk buln resulting in entering into the limits without authority. On his phase three certification ride, thus failing the ride..."

(UP Exhibit "A," note that rides are not in chronological order but dates are circled for easier location.)

Five different persons evaluated Petitioner's performance on six independent occasions. Petitioner was verbally coached and apprised of his failures during each trip. Union Pacific properly notified Backus, by letter dated August 26, 2005 (UP Exhibit "B"), that he had failed the ride and notified him of the decision to deny his certification. Petitioner appealed the denial to the LERB, which upheld Union Pacific's decision to deny certification. Petitioner appeals from that decision, but he has materially changed the focus of his argument before the Administrator.

## **ARGUMENTS**

### **Petitioner may not challenge a denial based on an "Intervening Cause."**

The record of the August 23, 2005 ride is included in UP Exhibit A. The record clearly documents that Petitioner had multiple failures including failure to comply with a FORM B and entering limits without authority. Even though he was unable to complete the trip, the DSLE had also taken exception for rule violations involving speed, calling signals and safety. Clearly, there is sufficient, undisputed evidence that Backus failed the certification ride and the denial was warranted.

The Petitioner took several depositions in an attempt to support his appeal. In the cab with Petitioner on August 23, 2005 were the DSLE, Jason Cathey, the conductor, Michael Ortega, and an observing engineer, Gregory Wahl. It is undisputed that approximately two miles before the Form B was to take effect, Petitioner called out the Form B and red cab zone status. Thus, there is no dispute that Petitioner knew that a Form B was to take effect on the ride.

The deponents generally agree that as the locomotive approached a signal just before a tunnel, Cathey began asking questions of the crew regarding the territory and signal placement. After coming through a tunnel, the locomotive passed a diverging clear signal at milepost 356, which took the locomotive onto a second track. Without stopping as he was required to do by the clear language of Form B, Petitioner operated the locomotive into the Form B without track authority. As a result of the Form B violation, the conductor and the observing engineer were disciplined, and the observing engineer had his license revoked. Had Backus been a certified engineer at the time of

the incident, he too would have had his certificate revoked. But, he was not an engineer; he was an applicant – a student.

Because Backus was an applicant, and not a certified engineer, his request for certification was denied. Section 240.307(i)(l) does not apply to applicants, but only to persons certified as locomotive engineers. Thus, as a matter of law, Petitioner's intervening cause argument should fail as it cannot be made in challenge to a denial of certification, but only in a challenge to a revocation.

Petitioner argues that when crews are in a red cab zone, the focus must be on controlling the train and complying with the rules. This is true. And while Cathey's questions may have posed a distraction, this distraction is not sufficient justification for violating the Form B. It is undeniable that Backus did not safely control the train and he violated a Form B.

While Cathey, whose employment with Union Pacific was involuntarily terminated in April 2008, may *now* feel that it was not Backus's fault that the train entered into work limits without authorization, he did not express that opinion to his supervisor, DRO Ben Ritter, when the two of them discussed the incident in 2005. (Exhibit "C" Ritter Declaration). The depositions reveal that fault was not only assessed against Backus by denying his certificate, but that responsibility for the Form B violation rested on the observing engineer and the conductor too. For their performance, each was disciplined and the observing engineer had his locomotive engineer certificate revoked.<sup>1</sup> Violating a Form B requires these results.

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<sup>1</sup> DSLEs are covered by the meaning and import of 49 C.F.R. § 240.117[c][2].

Petitioner also argues that the failure of the maintenance crew to put up flags should absolve him of his poor performance. Even in his affidavit, Petitioner acknowledges that flags can be used but are not required. (Backus Affidavit, Paragraph 6: "[I]t is common practice on the railroad to alert crews . . . by placing a flag.") This common practice does not excuse, in any way, Backus's failure to abide by the express directions included in the Form B, to stop the train before entering.

### **Allegation of Personal Animus Against Petitioner**

Petitioner also claims that Dan Shudak had a personal vendetta against him, and that, somehow, Shudak was responsible for Backus's failure to achieve a locomotive engineer certificate. Backus reaches back to unrelated events that occurred in 1999, 2000, 2002 and 2004 – and even to an event that happened to a stranger to this proceeding (Petitioner's Ex. E) -- to generate some evidence that Shudak had a personal animus against him that affected the outcome of his certification process. However, there is not one shred of evidence that Shudak had anything to do with the decisions made about Backus's application for a locomotive engineer certificate.

According to Joel "Ben" Ritter, who was Director of Operating Practices ("DRO") in West Colton at the time of the Petitioner's rides, the superintendent of the relevant service unit (L.A. Service Unit) was O.W. Cromwell, not Dan Shudak. (UP Exhibit C) Indeed, Shudak left the Roseville, California Service Unit in 2004 for Houston, Texas, months before Backus's certification ride on August 25, 2005. (UP Exhibit C) Shudack testified that he basically does not recall much about Backus, apparently much to Backus's dismay.

Backus's August 23, 2005, certification ride was out of West Colton. Unlike Shudak, DRO Ritter recalls Backus and the August 23, 2005, incident. It was part of Ritter's job as DRO in West Colton to handle engineer certification issues. Jason Cathey worked for him in 2005. Ritter recalls agreeing with Cathey that Backus's application for engineer certification should be denied. He told Cathey to terminate Mr. Backus's employment and to send a letter informing Backus that he had failed the ride and was denied certification. (UP Exhibit C) Ritter is copied on that letter. (UP Exhibit B) Cathey took no exception to Ritter's decision at the time. Ritter did not communicate with Dan Shudak regarding the denial of Backus's certification. (UP Exhibit C) For all these reasons, all evidence regarding Shudak is irrelevant to the issues before the Administrator. Because there is no evidence that there was any hostile animus that prevented Backus from obtaining a fair ride and evaluation, Backus's appeal should be dismissed.

**Petitioner did not timely file his appeal**

Petitioner claims to have authored a letter dated August 24, 2005 and to have sent the letter to Union Pacific. There is no information regarding to whom Backus gave the letter, if he did, and no copy has been located in the Carrier's possession.

What is undisputed is that Union Pacific sent his written notice of denial on August 26, 2005. Not counting the date that Union Pacific provided notice of the decision to deny a certificate to Backus, but starting with the date of August 27, 2005, Petitioner waited 182 days before filing an appeal which is date-stamped February 24, 2006. The Carrier counts as follows:

August 27 thru 31 equals 5 days                      5

September	30
October	31
November	30
December	31
January	31
February 1-24	24 days
Total	182 days

Because his initial appeal was "filed with FRA more than 180 days after the date of the railroad's denial decision," his appeal should be denied as untimely. See 49 CFR § 240.403[c].

### **Conclusion**

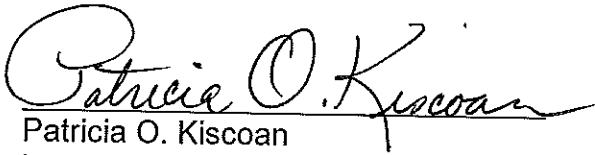
The undisputed facts demonstrate that Petitioner's performance was observed by several managers, that he was coached over several months and never exhibited skills sufficient to become a certified engineer. If Backus already had been a certified locomotive engineer at the time of the August 23, 2005 ride, the incident involved would have required a revocation. While Backus wants to claim that there was an intervening cause that forced his failure, this argument falls on the weight of his own evidence that he knew and had called out the Form B two miles before he was to have stopped. Backus's interest in setting the blame elsewhere is evidence by trying to tie a former superintendent, for whom Backus did not even work at the time of the certification process, to Backus's unsafe and unsatisfactory performance. There is not one shred of evidence that anyone was out to manufacture his failure. Backus's own unsafe performance mandated that Union Pacific deny his application for certification.



For all these reasons, union pacific asks the Administrator to affirm Union Pacific's decision to deny a locomotive engineer certificate to Robert Backus.

Dated this 8<sup>th</sup> day of July, 2009.

Respectfully submitted by:

A handwritten signature in cursive script, reading "Patricia O. Kiscoan". The signature is written in dark ink and is positioned above the printed name and contact information.

Patricia O. Kiscoan  
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Union Pacific Railroad Company  
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Attorney for Co-Respondent Union Pacific Railroad Company

CERTIFICATE OF SERVICE  
FRA-2007-27382 (Backus) (FRA Docket No. EQAL. 06-13)

The undersigned hereby certifies that on the 8<sup>th</sup> day of July, 2009, the Union Pacific's Brief and accompanying exhibits have been served to all parties named below via U.S. mail unless otherwise specified, return receipt requested.

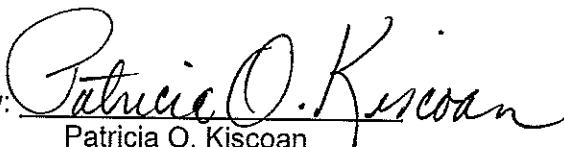
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By:   
Patricia O. Kiscoan



**UP Employee Site -- Employee Quality  
Management System  
Employee Quality Management System - Employee Score  
Supporting Documents (EQM3DOCA)**

https://wf03.www.uprr.com/ibi\_apps/WFServlet  
Page Received From Server On: Thursday March 23, 2006 10:50 AM CST

**EMPLOYEE SCORE**

EMPLOYEE SCORE - DETAIL - 03/23/06 - (EQM3SD01)  
FOR: . . . EMP ID:

	TYPE OF POINT DEDUCTION	EVENT DATE	OVERALL SCORE
A. RULES COMPLIANCE	DISCIPLN UPGRADE LEVEL	07/15/05	100
	E.R. ENGINEER RULES	05/11/05	18
	RIDE ENGINEER RULES	08/23/05	21
B. TRAIN HANDLING	E.R. ENGR TRN HANDLING	05/11/05	28
	RIDE ENGR TRN HANDLING	08/23/05	33
TOTAL DEDUCTIONS			200
SCORE AFTER DEDUCTIONS			800

RIDE AND E.R. OBSERVATIONS ARE AVERAGES OF ALL SUCH EVENTS IN THE PERIOD;  
DATE IS FOR LATEST EVENT. MULTIPLE FIELD TESTS ON SAME DAY ARE ON ONE LINE.

**NO INJURY RECORDS FOUND (One Year)**

**ENGINEER TRAIN RIDES (One Year)**

EQMS - Engineer Train Ride Detail Report - Last 365 Days

Circ7: JQ181 Train: QRVWC 27 Start: 06/29/05 0350 P Stop: 06/29/05 0900 P (EQM3SD23)  
ENG BACKUS RS Orig: JQ181 Dest: JQ154 Serv type:T  
Student: Y Lds: 060 Mtys: 028 Tons: 0008410 Feet: 05656 Helper: N

Weather: CLEAR MOP Name: BARLOW BA Mand. Review: Date:

Evaluation Reason: Performance: N Qualification: N  
Certification: N Familiarization: Y

**Ride Evaluation:**

Bell : P	Ind. brakes : P	Dyn. brakes : P	Knows territory : C
Radio : P	Throttle mod. : P	Auto brakes : P	EPA/EDBA : P
Horn : P	Calling signals : P	Controls slack: P	Trk Warrant/bln : P
Books : P	Depart insp/test : P	Monitor gauges: P	Reports defects : P
Speed : P	Signal indication: P	Secures unit : P	Meets schedule : P
Safety: P	Fuel conservation: P	Headlight : P	

Miles: 037

Comments: ONLY MADE IT 37 MILES DUE TO BNSF LOCOMOTIVE FIRE. NEEDS  
WORK ON TERRITORY KNOWLEDGE.

**EXHIBIT**

tabbles

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## EQMS - Engineer Train Ride Detail Report - Last 365 Days

(EQM3SD23)

Circ7: JQ181 Train: QRVWC 06 Start: 04/08/05 1345 P Stop: 04/08/05 2130 P  
 ENG BACKUS RS Orig: JQ181 Dest: SP760 Serv type:T  
 Student: Y Lds: 062 Mtys: 010 Tons: 0008168 Feet: 04912 Helper: N

Weather: CLEAR MOP Name: CATHEY JB Mand. Review: Date:

Evaluation Reason: Performance: Y Qualification: N  
 Certification: N Familiarization: N

Ride Evaluation: Miles: 058  
 Bell : P Ind. brakes : P Dyn. brakes : P Knows territory : C  
 Radio : P Throttle mod. : P Auto brakes : C EPA/EDBA : P  
 Horn : P Calling signals : P Controls slack: P Trk Warrant/bln : P  
 Books : P Depart insp/test : P Monitor gauges: P Reports defects : P  
 Speed : C Signal indication: P Secures unit : P Meets schedule : P  
 Safety: P Fuel conservation: P Headlight : P

Comments: NEEDS MORE TIME HAD TO COACH FIT ON BP TEST AFTER STOPPING A  
 ND NEEDS QUIT RUNNING 4-5 MPH UNDER SPEED.

## EQMS - Engineer Train Ride Detail Report - Last 365 Days

(EQM3SD23)

Circ7: JQ181 Train: QRVWC 22 Start: 08/23/05 0920 P Stop: 08/24/05 1423 P  
 ENG BACKUS RS Orig: JQ181 Dest: JQ113 Serv type:T  
 Student: Y Lds: 064 Mtys: 014 Tons: 0008303 Feet: 05329 Helper: N

Weather: CLEAR MOP Name: CATHEY JB Mand. Review: Date:

Evaluation Reason: Performance: N Qualification: N  
 Certification: Y Familiarization: N

Ride Evaluation: Miles: 043  
 Bell : P Ind. brakes : P Dyn. brakes : P Knows territory : P  
 Radio : P Throttle mod. : P Auto brakes : P EPA/EDBA : P  
 Horn : P Calling signals : R Controls slack: P Trk Warrant/bln : R  
 Books : P Depart insp/test : P Monitor gauges: P Reports defects : P  
 Speed : R Signal indication: P Secures unit : P Meets schedule : P  
 Safety: R Fuel conservation: P Headlight : P

Comments: FAILED TO COMPLY WITH A FORM B IN A TRK BULN RESULTING IN EN  
 TERING INTO THE LIMITS WITHOUT AUTHORITY. ON HIS PHASE THREE  
 CERTIFACTION RIDE, THUS FAILING THE RIDE....

## EQMS - Engineer Train Ride Detail Report - Last 365 Days

(EQM3SD23)

Circ7: JQ181 Train: FOTNLBS18 Start: 07/28/05 0800 P Stop: 07/28/05 1400 P  
 FIT BACKUS RS Orig: JQ181 Dest: SP760 Serv type:T  
 Student: Y Lds: 093 Mtys: 000 Tons: 0012927 Feet: 05779 Helper: N

Weather: CLEAR MOP Name: HENDRICKSON CP Mand. Review: Date:

Evaluation Reason: Performance: N Qualification: Y  
 Certification: N Familiarization: N

Ride Evaluation: Miles: 090  
 Bell : P Ind. brakes : R Dyn. brakes : R Knows territory : C  
 Radio : N Throttle mod. : P Auto brakes : R EPA/EDBA : C  
 Horn : P Calling signals : P Controls slack: R Trk Warrant/bln : P  
 Books : P Depart insp/test : N Monitor gauges: P Reports defects : N  
 Speed : R Signal indication: P Secures unit : N Meets schedule : N

CARRIER  
 "A"

Safety: R Fuel conservation: N Headlight : P

Comments: FIT IN SIM AT JQ181 FOR EVAL MULTIPLE FAILURES ON PWR-DYN 10  
SEC WAIT, MULTI NO BAIL PRIOR TO SET AIR, FAILED UNANNOUNCED  
YLW FLG TEST AT MP456.5, PLACE TRAIN IN EMERG@25MPH AT REST.

EQMS - Engineer Train Ride Detail Report - Last 365 Days

Circ7: JQ181 Train: QRVWC 13 Start: 07/14/05 0225 P Stop: 07/14/05 1010 P  
ENG BACKUS RS Orig: JQ169 Dest: JQ113 Serv type: T  
Student: Y Lds: 061 Mtys: 032 Tons: 0008566 Feet: 05819 Helper: N

Weather: CLOUDY MOP Name: PARKER JR KA Mand. Review: Date:

Evaluation Reason: Performance: N Qualification: N  
Certification: Y Familiarization: N

Ride Evaluation: Miles: 050  
Bell : P Ind. brakes : P Dyn. brakes : P Knows territory : C  
Radio : P Throttle mod. : R Auto brakes : R EPA/EDBA : R  
Horn : P Calling signals : P Controls slack: P Trk Warrant/bln : P  
Books : P Depart insp/test : P Monitor gauges: R Reports defects : P  
Speed : R Signal indication: R Secures unit : P Meets schedule : P  
Safety: P Fuel conservation: P Headlight : P

Comments: MR. BACKUS FAILED TO CONTROL TRAIN AT MAX. DOWNHILL SPEED. M  
ONITOR GAUGES. AND HAS POOR KNOWLEDGE OF TERRITORY

ENGINEER EVENT RECORDERS (One Year)

EQMS - Engineer EVENT RECORDER DETAIL REPORT - Last 365 days

Circ7: SP760 Train: MWCST 11 Start: 05/11/05 0545 P Stop: 05/11/05 1720 P  
ENG BACKUS RS Orig: SP760 Dest: JQ181 Serv type: T  
Student: Y Lds: 012 Mtys: 018 Tons: 0002202 Feet: 01831 Hlpr: N

MOP Name: LOWELL TJ Mandatory Review: Date:  
Tape Removed: Date: 05/11/05 Time: 1703 Location: JQ181 Loco: UP 005762

Evaluation Reason: Performance : Y Familiarization : N  
Break in two : N Collision : N  
Lading damage: N Crossing Accident: N  
Derailment : N Rules Violation : N

Tape Evaluation: Miles: 179  
Ind. brakes : C Fuel conservation: P Dyn. brakes: C Horn : C  
Throttle mod. : C Signal indication: P Auto brakes: P Speed: P  
Depart insp/test: P Controls slack : N

Comments: INSTRUCTED ON BAILING INDEPENDENT, GRADUDAL USE OF DYNAMIC  
AND THROTTLE, PROPER WHISTLE SEQUENCE

NO FIELD TRAINING TESTS FOUND (One Year)

DISCIPLINE (Two Years)

EQMS - Discipline Two Year History Report - File #. (EQM3SD26)

CARRIER  
"A"

## CURRENT UPGRADE LEVEL 5

Curr Pos: Board: Empl: .  
 Circ7: Pos Code: Crew:  
 Date: 08/26/05 Location: . Action: 400-DISMISSAL

Incident Date: 07/15/05 Issuing Officer: .  
 Subdivision: Mile Post : 0000.00  
 Days Assigned: 0 Cert Revoke: N  
 Days Deferred: 0 Reason Chgd: .  
 Days Served : 0

RULE VIOLATIONS : 000000 000000 000000 000000 000000  
 000000 000000 000000 000000 000000

HAZ MAT VIOLATION: TIM TAB VIOLATION:  
 ON JULY 15, 2005 FAILED TO SUCCESSFULLY COMPLETE PHASE TWO (2) SKILLS P  
 ERFORMANCE CHECK RIDE ON JULY 15, 2005, WITH DSLE KEN PARKER. WITH NOT  
 BEING ABLE TO SUCCESSFULLY COMPLETE THE PHASE THREE (3) STUDENT ENGIN  
 EER TRAINING AS SET FORTH IN SECTION B3 OF ARTICLE II, RELEASED FROM T  
 HE FIREMEN'S TRAINING PROGRAM.

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**NO ENGINEER CREW INCIDENTS FOUND (One Year)**


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**ENGINEER FUEL FIELD TESTS (One Year)**


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EQMS Field Training and Testing - FUEL LISTING (EQM3SD29)  
 03/23/06  
 FROM DATE : 32305

ENGR: BACKUS RS

MOP: HOOD CW

DATE	TIME	TESTOR	TEST RULE	ACT	TRN	SYMBOL	OCC	SUB	M-POST
05/11/05	1710	LOWELL	16A 33.6.3(A)	1	MWCST	11	002	0940	314

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**NO DECERTIFICATIONS FOUND (Two Years)**


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**NO CONDUCTOR RIDE OBSERVATIONS FOUND (One Year)**


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**NO CONDUCTOR EVENT RECORDERS FOUND (One Year)**


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**NO RCO RIDE OBSERVATIONS FOUND (One Year)**


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**NO RCO EVENT RECORDERS FOUND (One Year)**


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CARRIER  
 "A"

**EEO Policy Summary**

Union Pacific Railroad Company has a very strong EEO policy that prohibits discrimination and harassment in the workplace, while representing Union Pacific, or during travel or overnight stays paid for by Union Pacific.

You are expected to fully comply with this policy and not engage in any acts of discrimination or harassment (teasing, joking, demeaning comments and behaviors) that are based on race, color, age, gender, disability, national origin, sexual orientation, religion or veteran status. Additionally, you are not to retaliate in any way against persons who have exercised their legal right to file an EEO internal complaint or government charge.

If you believe you have been treated unfairly because of a protected characteristic as mentioned above, or if you observe someone else being treated in ways that violate EEO policy, you must report this by calling 866-877-3362, a toll-free number answered 24-hours a day. Your complaint will be investigated and appropriate action will be taken.

You should also realize that many things you find unpleasant or unprofessional at work are not EEO policy violations. For example, if someone yells at you, tells you to do your work, or has a bias against a railroad you used to work for, this may not necessarily be an EEO issue.

Every year the company sends you a copy of the current EEO policy. You also may access this policy on-line through Union Pacific's employee website at [uprr.com](http://uprr.com).

Please add this summary of the EEO policy into your rules book for quick reference.

CARRIER  
'A'

# UNION PACIFIC RAILROAD COMPANY

OLIVER W. CROMWELL  
General Superintendent

BRIAN E. BUSSEY  
Manager Administration



19100 Slover Avenue  
Bloomington, CA 92316

August 26, 2005  
Emp ID No: 0305921

## **US REGULAR & UPS NEXT DAY AIR** **SIGNATURE REQUIRED**

Mr. R. S. Backus  
1117 South Chester Avenue  
Bakersfield CA 93304

Dear Mr. Backus:

You are hereby notified that on August 23, 2005, you failed to successfully complete your Phase Three (3) Skills Performance Check Ride on the QRVWCB-22 from Bakersfield, California, to Mojave, California, on the Mojave Subdivision.

As prescribed by UTU-E Western Lines Agreement Article II, Section B2, Phase Three (3), you entered into Phase Three (3) on July 15, 2005, after you failed to successfully complete your Phase Two (2) Skills Performance Check Ride on July 15, 2005, with DSLE Ken Parker. With your not being able to successfully complete your Phase Three (3) student engineer training as set forth in Section B3 of Article II, you are being released from the Firemen's Training Program. Any FRA certification obtained pursuant to this agreement shall be considered invalid and you will forfeit any certificate associated therewith.

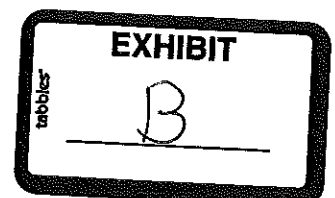
As prescribed in the UTU-E Western Lines Agreement, your failure to successfully complete the Fireman's Training Program will be sufficient cause for termination from the Union Pacific Company. Therefore, Union Pacific Company is unable to continue your employment, and as a result, you have been terminated.

Please arrange to have all passes and Company property including company radios in your possession delivered to me at 700 Sumner, Bakersfield, California, as soon as possible.

Sincerely,

Jason B. Cathey  
Manager of Road Operations

cc: J. E. Gabel, LC-UTU-E, 4614 Islands Drive, Bakersfield CA 93312-1941 - Fax: (661) 631-1715  
A. Hallberg, Regional Labor Relations Officer - Fax: 916-789-6445  
L. P. Bonneville, Director of Train Operation Practices - Emailed  
J. B. Ritter, DRO - Emailed  
L. Brennan, Engineer Licensing, Omaha - Fax: 501-0317  
Penny Lyons, Engineer Licensing - Emailed  
Roby Brown, General Manager of Safety - Emailed  
CMS - Omaha





U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL RAILROAD ADMINISTRATION  
WASHINGTON D.C.

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FRA – LOCOMOTIVE ENGINEER CERTIFICATION CASE  
R.S. Backus Hearing Petitioner, DOT DKT. # 2007-27382  
(FRA Docket No. EQAL 06-13)

Union Pacific Railroad Company, Co-Respondent

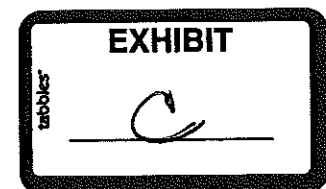
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DECLARATION OF JOEL B. RITTER

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COMES NOW the undersigned, Joel B. Ritter, and states based on personal knowledge and certain business records kept and maintained in the ordinary course of business by Union Pacific Railroad Company ("Union Pacific"), pursuant to 28 U.S.C. § 1746, and declares as follows:

1. I am over the age of 18 and competent to make this declaration.
2. I was the General Director of Regional Operations in Roseville, California from 2003 to 2004 and the Director of Road Operations in West Colton, California, from 2005 to 2006. Currently, I am the Manager of Road Operations in Sparks, Nevada.
3. In my role as Director of Road Operations in West Colton, I had responsibility for handling discipline and engineer certification issues. At the time, I had several managers of operating practices who are DSLEs working under my supervision, including Jason Cathey. One important part of my job responsibilities is to determine whether a student engineer should be granted or denied certification, and whether locomotive engineers certification should be granted, suspended or



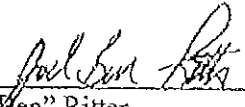
revoked. My direct supervisor at that time was O.W. Cromwell, the General Superintendant of West Colton.

4. I have knowledge of the facts related to the denial of certification and subsequent employment termination of Petitioner Robert Backus. Robert Backus was a student engineer assigned to my service unit who failed his phase three certification ride on August 23, 2005, based on his failures in speed, safety, calling signals, and track warrant. Mr. Backus failed numerous certification attempts and ultimately violated a Form B track bulletin.
5. Immediately following the August 23, 2005 Form B violation, I spoke with Jason Cathey, the MOP/DSLE in my service unit who reported to me. Mr. Cathey was conducting the final certification ride for Mr. Backus and he informed me of the run-through incident and Mr. Backus's additional failures on the August 23, 2005 ride.
6. I instructed Mr. Cathey to terminate Mr. Backus and send a letter advising Mr. Backus that he failed his phase three skills performance check ride, thus failing his certification ride. I also instructed Mr. Cathey to include a copy of Mr. Backus's notification of certificate denial. At no time did I indicate to Mr. Cathey that we were "out to get" Robert Backus. At no time did Mr. Cathy take exception to my decision to deny certification or to terminated Mr. Backus's employment.
7. At the time of Mr. Backus's certification denial, my supervisor was Oliver Cromwell, not Dan Shudak. Dan Shudak transferred out of the Roseville SU in 2004, well before Mr. Backus's certification ride occurred. There would have

been no business reason for me to contact Dan Shudak regarding Mr. Backus's certification rides, and I did not do so.

8. I declare under penalty of perjury that the foregoing is true and correct.

Dated July 7, 2009.

  
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Joel "Ben" Ritter